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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Situation of human rights in Myanmar

Report of the Special Rapporteur, Mr. Rajsmoor Lallah, submitted in accordance with Commission on Human Rights resolution 1996/80

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Introduction

1. The mandate of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar has been described in each of the Special Rapporteur's previous reports to the General Assembly (A/47/651, A/48/578, A/49/594, A/50/568 and A/51/466) and to the Commission on Human Rights (E/CN.4/1993/37, E/CN.4/1994/57, E/CN.4/1995/65 and E/CN.4/1996/65). The mandate, initially articulated in Commission resolution 1992/58 and extended most recently by the Commission in resolution 1996/80 of 23 April 1996 (approved by the Economic and Social Council in its decision 1996/285 of 24 July 1996), required the Special Rapporteur to establish or to continue direct contacts with the Government and people of Myanmar, including political leaders deprived of their liberty, their families and their lawyers with a view to examining the situation of human rights in Myanmar and following any progress made towards the transfer of power to a civilian government and the drafting of a new constitution, the lifting of restrictions on personal freedoms and the restoration of human rights in Myanmar. In resolution 1996/80, the Commission urged the Government of Myanmar to cooperate fully and unreservedly with the Commission and the Special Rapporteur and, to that end, to ensure that the Special Rapporteur effectively had free access to any person in Myanmar whom he might deem it appropriate to meet in the performance of his mandate, including Daw Aung San Suu Kyi; requested the Secretary-General to give all necessary assistance to the Special Rapporteur; and requested the Special Rapporteur to report to the General Assembly at its fifty-first session and to the Commission at its fifty-third session.

2. On assuming his mandate, the present Special Rapporteur has tried to identify the priority concerns of the international community with regard to the situation of human rights in Myanmar. Such concerns are referred to in the resolutions which the various competent organs of the United Nations have adopted over the past five years, in particular General Assembly resolution 51/117 and Commission resolution 1996/80, which are the most recent. These concerns constitute the substantive content of the Special Rapporteur's mandate. They may be summarized as follows:

(a) The electoral process initiated in Myanmar by the general elections of 27 May 1990 has yet to reach its conclusion and the Government still has not implemented its commitments to take all necessary steps towards the establishment of democracy in the light of those elections;

(b) Many political leaders, in particular elected representatives, remain deprived of their liberty;

(c) Violations of human rights remain extremely serious, including, in particular, the practice of torture, summary and arbitrary executions, forced labour, including forced portering for the military, abuse of women, politically motivated arrests and detention, forced displacement, serious restrictions on the freedoms of expression and association, and the imposition of oppressive measures directed, in particular, at ethnic and religious minority groups;

(d) The continuing fighting with ethnic and other political groups, despite the conclusion of cease-fire agreements, which, together with the continuing violations of human rights, has resulted in flows of refugees to neighbouring countries.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

3. With a view to discharging his mandate in the most impartial and effective manner, the Special Rapporteur immediately after his nomination sought the cooperation of the Government of Myanmar by sending on two occasions letters informing them of his recent nomination and asking them for authorization to travel to Myanmar in order, inter alia, to examine the situation in situ and to meet with appropriate government representatives as well as other persons relevant to the fulfilment of his mandate and to allow him to discharge his mandate fully and reliably in reporting to the States Members of the United Nations and to ensure that the General Assembly and the Commission on Human Rights are presented with an accurate and comprehensive assessment of the situation of human rights in Myanmar.

4. In the meantime, and in order to become familiar with the different issues pertaining to his mandate, the Special Rapporteur visited in July 1996 Switzerland and the United Kingdom and met with several individuals and organizations, both intergovernmental and non-governmental, based in Geneva and London who possess recent and useful information on alleged human rights violations in Myanmar.

5. On 8 October 1996, the Special Rapporteur submitted a preliminary report (A/51/466) to the General Assembly at its fifty-first session.

6. On 15 November 1996, the Special Rapporteur presented his interim report on the situation of human rights in Myanmar to the fifty-first session of the General Assembly at United Nations Headquarters. While in New York, the Special Rapporteur met with several representatives of governments and non-governmental organizations and also private individuals who imparted their views and information on the situation of human rights in Myanmar.

7. In his continuing effort to obtain the most accurate and up-to-date information on the situation of human rights in Myanmar, the Special Rapporteur visited Thailand in December 1996 to assess the situation of the displaced persons from Myanmar living in refugee camps along the Thai-Myanmar border. The findings of the mission are reflected in section IV of this report.

8. On 9 January 1997, the Special Rapporteur addressed a third letter to the Minister for Foreign Affairs of Myanmar in which he reiterated his request for cooperation and to visit Myanmar. Unfortunately, to date, his requests have met with no response. In this regard, the Special Rapporteur wishes to highlight, and to express his regret about the fact that since his appointment in June 1996, he has yet to be allowed by the Government of Myanmar to see the situation on the ground despite the requests expressed in the resolutions of the General Assembly and the Commission on Human Rights that he have direct access to the Government and people of Myanmar.

9. Notwithstanding the lack of cooperation on the part of the Government of Myanmar, the Special Rapporteur through his missions and consultations has received much assistance and information from governmental, intergovernmental and non-governmental sources. He has also received information from individuals connected in one way or another with the situation in Myanmar. He has also received several well-documented reports describing the situation in Myanmar, particularly in relation to the matters over which the General Assembly and the Commission on Human Rights have expressed concern. These have proved very helpful.

10. The present report is based upon information received by the Special Rapporteur through 31 December 1996. The report is to be read in conjunction with the Special Rapporteur's report to the General Assembly; the present report updates certain matters discussed before the General Assembly while treating some issues not addressed there.

III. THE EXERCISE OF CIVIL AND POLITICAL RIGHTS

A. The impact of Myanmar law on human rights

11. In his last report to the General Assembly (A/51/466, sects. III and IV), the Special Rapporteur analysed the question of the legitimacy of the assumption and continued retention of martial law powers after the elections of 1990, its break with constitutionality and legal continuity, its non-conformity with international norms and the adverse impact of Myanmar law on the respect and protection of human rights. In this regard, the Special Rapporteur mentioned the most commonly employed laws banning the enjoyment of civil and political rights and suppressing dissent against the State Law and Order Restoration Council (SLORC). He came to the conclusion that various laws, by themselves, criminalize or adversely affect freedom of thought, information, expression, association and assembly through fear of arrest, imprisonment and other sanctions. In addition, where they do not criminalize them, executive acts or orders greatly restrict those rights.

12. The Special Rapporteur notes that these laws and orders aimed at the restriction of civil and political rights continue to be invoked to arrest Myanmar citizens. Moreover, new laws have been enacted in order to provide the authorities other legal bases to suppress the rights of freedom of expression. Therefore, the Special Rapporteur was not surprised to receive information that people continued to be arrested and detained for the peaceful exercise of fundamental human rights.

13. For example, on 15 August 1996 National League for Democracy (NLD) member Dr. Hlaing Myint, together with NLD member Kyaw Khin and student Maung Maung Wan, were sentenced to a total of 10 years' imprisonment (7 years under section 5 (j) of the Emergency Provisions Act and 3 additional years under the 1985 TV and Video Act).

14. Order 2/88, which prohibits public gatherings of more than five persons, has also been invoked in several arrests lately, including the arrest of people attending Daw Aung San Suu Kyi's weekend speeches delivered at the gate to her home.

15. Law No. 5/96 of 7 June 1996, entitled "Protecting the Stable, Peaceful and Systematic Transfer of State Responsibility and the Successful Implementation of National Convention Free from Disruption and Opposition", prohibits, inter alia, the preparation or dissemination of speeches or statements that undermine the stability of the State or are critical of the SLORC, and prescribes up to 20 years' imprisonment for persons violating the law, while organizations taking part in such activities can be banned and have their funds and property confiscated.

16. According to a statement by Lt. Gen. Khin Nyunt at a press conference on 31 December 1996, Nyein Si (also called Nyein Myint) was arrested on 7 December 1996 in a teashop on 24th Street in Yangon. He had in his possession pamphlets and documents allegedly proving his and other youths' involvement with the banned Burma Communist Party. They were also said to have conspired in the student demonstrations. The statement referred to a total of 34 youths, among them Toe Toe Htun, who had allegedly been involved in underground activities, who were apprehended in December following student demonstrations. Law No. 5/96 was invoked in these cases.

17. The Television and Video Act of 31 July 1996 requires that:

(a) Foreign diplomatic missions and United Nations agencies obtain permits to show imported videos at "public exhibitions". Government video censorship boards will have the right to ban, censor or restrict the audience for such showings;

(b) Private video operators obtain licences from "video business supervisory committees" which will be formed in all States and Divisions composing the Union of Myanmar;

(c) All videos, both imported and locally produced, be approved by the video censorship board.

Violations of these provisions are liable to punishments of up to three years' imprisonment and/or fines of up to 100,000 kyats. The law also forbids private TV transmitters that are not authorized by the Government, with five-year prison terms for any offenders.

18. The Computer Science Development Law of 27 September 1996 makes the unauthorized import, possession and use of certain types of computer equipment, for example computers with networking capability, punishable with sentences of 7 to 15 years in prison and/or a fine. A "Myanmar Computer Science Council" will be established to approve the type of equipment to be restricted. According to the Government-controlled newspaper New Light of Myanmar (NLM), the punishment is prescribed for anyone setting up links with a computer network without prior permission or who uses computer networks or information technology for undermining State security, law and order, national unity, the national economy or national culture or who obtains or transmits State secrets. Members of unauthorized computer clubs may, according to reports, be sentenced to prison terms of a minimum of three years. A punishment of 5 to 10 years' imprisonment is prescribed for anyone who imports or exports computer software or information banned by the Myanmar Computer Science Council.

19. The Special Rapporteur regards these laws as continuing attempts to restrict freedom of opinion and expression in Myanmar, already seriously hampered by a number of other laws in force which the authorities have used to arbitrarily suppress the expression of any opposition opinion or any undesired discussion of certain issues.

B. Extrajudicial, summary or arbitrary executions

20. The Special Rapporteur welcomed the Government's decision to commute death sentences passed between 18 September 1988 and 31 December 1992 to life sentences. Although the Special Rapporteur notes that there presently does not appear to exist an explicit or systematic government policy of encouraging summary executions, he is greatly concerned by the frequent allegations of arbitrary killings of civilians and insurgents by members of the Tatmadaw under a variety of circumstances, in violation of the right to life contained in article 3 of the Universal Declaration of Human Rights. The right to life is considered to have the character of jus cogens, that is binding on all States under all circumstances without any exception. The following allegations exemplify the reports received by the Special Rapporteur:

(a) On 7 December 1996, the owner of the Sein Ba Bu laundry in Railway Station street in Yangon was reportedly arrested and beaten to death by riot police in connection with the breaking up of student demonstrations;

(b) According to reports, Bawi Kung was killed by Light Infantry Battalion (LIB) No. 266 on 9 October 1996 when entering Ngalang village in Than Tlang township to stay the night. The two friends accompanying him attempted to flee, but one of them, Pa Lian, was arrested. After the killing, the army imposed a curfew until the next afternoon, and tortured village elders who could not provide them with the names of Chin National Front leaders;

(c) In January 1996 two men in Kong Kauk village in Shan State were allegedly arrested for suspicion of possession of firearms. They were reportedly taken to an army camp where they were beaten and the eye of one of them was gouged out. Both men were then allegedly killed;

(d) On 26 September 1996, the commander of column 2 of LIB 540, Soe Myint, reportedly shot and killed two villagers who were panning gold at Htee Nga Peh Loh. The soldiers are said to have wanted the gold for themselves.

C. Torture and cruel, inhuman or degrading treatment or punishment

21. Article 5 of the Universal Declaration of Human Rights as well as the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stipulate a complete prohibition of torture, a prohibition which is, in addition, considered to constitute international customary law of a jus cogens character, binding on all States under all circumstances. Torture is defined in the latter Declaration as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining

from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons".

22. Among the reports received by the Special Rapporteur alleging torture by agents of the Government of Myanmar are the following:

(a) On 12 December 1995, Capt. Kyaw Myint of Infantry Battalion (IB) No. 104 from Kyaukadin, Tenasserim Division, reportedly brought about 20 villagers, including some women, to Kyaukadin where they were allegedly detained and tortured for 15 days. The torture included standing in hot sunshine at mid-day, beating and having water poured over their heads. The villagers were reportedly accused only of being relatives of Karen guerillas;

(b) On 8 October 1996, members of Army Battalion 256 reportedly entered Ban Ai Long village, near the Thai border, and detained male villagers apparently in order to interrogate them about the presence of Shan insurgents in the village. The following day the troops reportedly beat 10 of the men with their fists, as a result of which one young villager fell unconscious;

(c) Two Akha girls (aged 15 and 16 years) were reportedly taken away by army troops and continuously raped for six days. According to the reports, both were severely traumatized and eventually died;

(d) A 25-year-old Akha man was reportedly kicked to death by SLORC soldiers since he was unable to carry his load of mortars because he was suffering from malaria.

Prison conditions

23. SLORC continues to refuse to change its stance on allowing the International Committee of the Red Cross (ICRC) to visit prisoners despite the fact that such visits are based on international humanitarian law and the 1949 Geneva Conventions to which Myanmar became a party in 1992.

24. The Special Rapporteur continues to receive reports of deplorable sanitary conditions in Myanmar prisons, where ill-treatment is allegedly common:

(a) From mid-November 1995 to early January 1996 U Win Tin, 66, who has suffered from poor health for several years and is dependent on his family for medicine and meat, was, together with a group of other prisoners, placed in military dog cells, made to sleep on concrete floors and not allowed visits from his family. In March 1996, at least five years were reportedly again added to his sentence for his part in trying to inform the Special Rapporteur of the harsh prison conditions;

(b) In June 1996 a Muslim student detained in Thayet jail, Magway Division, was allegedly beaten to death by military intelligence agents. When his body was given to the Muslims from Thayet town it reportedly was bruised all over and had a crushed skull.

25. Prisoners are reportedly not given sufficient food and health care, unless they can pay bribes to prison authorities. U Myo Aung, a Muslim activist serving a 10-year sentence in Thayawaddy jail in Pegu Division, who is reportedly constantly ill-treated and is suffering from dysentery, malaria, gastritis, malnutrition and other complications, was allegedly denied treatment in a proper hospital unless he could pay bribes to the jail doctor.

26. Other prisoners with poor health serving long sentences include Ma Thida, 29-year-old writer and surgeon who had been serving a 20-year prison sentence under various censorship laws since October 1993; Dr. Khin Zaw Win, serving a 15-year sentence on similar charges; and U Nay Min, a 47-year-old lawyer serving a 14-year sentence with hard labour for allegedly sending "false news" in interviews with the BBC.

27. It was learned that NLD MP Hla Than died in prison on 2 August 1996. According to reports he had asked to be allowed to die at home, but the military authorities had denied the request unless he resigned from the NLD, which he refused to do.

D. Due process of law

28. U Pa Pa Lay and U Lu Zaw, both comedians, and U Aung Soe and U Htwe were reportedly sentenced to seven years' imprisonment on 18 March 1996. U Pa Pa Lay and U Lu Zaw were charged under section 5 (c) of the 1950 Emergency Provisions Act with spreading false news, since they had allegedly made jokes about the military Government in a performance on independence day. It is not known what U Aung Soe and U Htwe were charged with. None of these persons was reportedly allowed legal representation at the trial.

29. On 28 March 1996, U Win Tin (66 years of age) and 20 others were sentenced under section 5 (e) of the Emergency Provisions Act and under the Penal Code for misappropriation of State property without being allowed any legal representation at the trial, which was held in prison.

30. On 15 August 1996, U Win Tin, U Po Aye, Maung Thein Lin, U Kan Shein and U Hla Tun Aung were reportedly sentenced to seven years' imprisonment at Insein Township Court under section 5 (j) of the Emergency Provisions Act. U Win Tin was charged with sending out some present and former NLD members to collect information on agricultural development in various parts of the country; the others were charged for their parts in collecting this information and for sending "false data". The NLD lawyer defending the five men was not allowed to cross-examine all witnesses during the trial, and he was not allowed to meet with U Win Tin privately. U Win Tin was reportedly sentenced to an additional seven years' imprisonment on 26 August under section 5 (e) of the Emergency Provisions Act for having served as a translator for Tin Hlaing at an interview with a foreign journalist.

E. Rights pertaining to democratic governance

31. The freedoms of thought, expression, association and assembly are guaranteed, respectively, by articles 18, 19 and 20 of the Universal Declaration of Human Rights. These freedoms are so closely related that

restrictions on one of these freedoms almost always has an impact on the others. This is especially so in relation to democratic governance as the will of the people is to be the basis of authority of government according to article 21 of the Universal Declaration of Human Rights. In Myanmar, the relationship is clear in so far as it would appear that the Government will not permit any thought, expression, association or assembly that conflicts with the policy of the SLORC.

32. The clearest evidence of violation of the freedom of expression continues to be found in Myanmar laws, such as Law No. 5/96 of 7 June 1996 referred to above. In application of this law, the following examples have been reported to the Special Rapporteur:

(a) The January 1996 issue of the magazine Thint Bawa reportedly had 50 pages torn out by censors since they celebrated the 75th jubilee of the founding of Yangon University. The March issue of the same magazine, intended to celebrate the 160th anniversary of the establishment of the first newspaper in Myanmar, was also severely censored;

(b) On 30 June 1996 Daw Aye Aye Win was reportedly arrested at her home in Tharketa after police officers had searched her house and confiscated 40 cassette recordings of speeches given by Daw Aung San Suu Kyi together with some NLD papers;

(c) On 28 September small groups of students and others, shouting "Long live Daw Aung San Suu Kyi", marched towards a meeting point at Shwedagon Pagoda, the roads leading to which were blocked by security forces, soldiers and police. One of the groups was reportedly arrested by security forces on Shwedagon Pagoda Road, and another group marching from the Shwedagon side was allegedly beaten, arrested and taken to Insein jail by army and security forces.

33. Another law which has perhaps been most frequently invoked to suppress freedom of expression and opinion is the 1950 Emergency Provisions Act which allows the imprisonment for up to seven years of any person who either "infringes upon the integrity, health, conduct and respect of State military organizations and government employees", "spreads false news about the government" or "disrupts the morality and behaviour of a group of people".

(a) On 26 August 1996 Tin Hlaing was reportedly sentenced to seven years' imprisonment under section 5(e) of the Emergency Provisions Act for spreading false news. According to the 27 August issue of NLM he had been instructed by U Win Tin to meet foreign journalists on 9 April 1996, to whom he had allegedly given information about torture of political prisoners, which the NLM characterized as "concocted news";

(b) On 23 September Yangon radio announced the arrest of nine youths charged with "inciting the people and spreading false news and fabricated leaflets with the intention to upset the stability of the State and community peace and tranquillity". The youths are Kyin Thein, Thant Zin and Ngwe Soe from Sangyuang township, and Nyan Win, Hla Hla Win, Kyaw Aye, Tun Aye, Myo Htut Aung and Tun Naing. They were sentenced to 13 years' imprisonment on 21 October. Further details on the trials are not known.

34. In his previous report to the General Assembly, the Special Rapporteur noted that in Myanmar violations of the freedom of association take two principal forms: restrictions on associations of a political nature, and the right to form and join independent trade unions.

35. As far as associations of a political nature are concerned, a number of the political parties that won seats in the 1990 elections have been banned, and the functioning of the few that remain has become increasingly difficult. The repressive climate in Myanmar since 1990 has made it virtually impossible for opposition parties to function and they have been severely hampered through constant harassment and arrests.

36. Since November 1995, when the NLD leaders withdrew from the National Convention, there has been an increasing number of arrests of the party members by the SLORC:

(a) Between 7 and 13 December, 28 NLD members were reportedly arrested, among them 13 NLD youths and one NLD politician. A total of more than 60 NLD members were arrested during the month of December;

(b) On 23 October 1996 the Deputy Chairman of NLD, U Kyi Maung, 75 years old, was arrested in Yangon accused of helping to organize a protest by some 500 students against police brutality which began on 21 and 22 October. According to a senior SLORC officer he was detained for questioning for having met with two students from Yangon Institute of Technology, Ye Thiha Thwin and Nyi Nyi Myo, at Daw Aung San Suu Kyi's house. U Kyi Maung was released only on 28 October;

(c) On 29 September six students taking part in the preparations for the 7th Students' Sports Festival in Tavoy were reportedly arrested by soldiers from LIB 19 after having taken a picture of a damaged Union Solidarity and Development Association (USDA) signboard in front of the local SLORC office, charged with illegal possession of a camera, suspicion of stealing firearms and attempted agitation for unrest;

(d) On 14 September 1996 NLD members Aung Myint Oo and Khin Aung were reportedly arrested, for an unknown reason, in Yangon by military intelligence officers;

(e) In September 1996 the wife and son of NLD MP Hla Than, who died in prison on 2 August 1996, were reportedly arrested without any reason being given;

(f) On 8 August 1996 Ye Htum and four other students were arrested after visiting Daw Aung San Suu Kyi's house.

37. If not arrested, NLD leaders and members are subjected to intense and systematic harassment. Several reports received by the Special Rapporteur continue to indicate that they are constantly intimidated and their freedom of movement and expression are repeatedly restricted.

38. The Special Rapporteur notes that since her release from house arrest, Daw Aung San Suu Kyi and her colleagues were allowed to make regular weekly

appearances at her home in Yangon and to speak to Myanmar citizens who gather there every weekend. However, since the end of September 1996, barricades and police and security forces have been introduced to prevent people from gathering outside her compound to attend weekend speeches or any possible NLD congress. Recently, it has been reported that the military intelligence has started to arrest people attending Daw Aung San Suu Kyi's weekend speeches delivered at her gate, charging the NLD with violations of Order 2/88 which prohibits public gatherings of more than five persons. This Order has not been consistently applied, and the SLORC has now extended the number of persons allowed to gather on Daw Aung San Suu Kyi's compound to 10 persons.

39. The Government stated on 28 September that it was compelled to prevent the congress from being held in order to preserve stability and because the necessary legal permission had not been obtained by the NLD:

> "The State Law and Order Restoration Council banned the 'All Burma Congress' which was to have been held by the National League for Democracy from 27 to 29 September 1996. To hold such a ceremony with a gathering of people or to use a public address system in the township, permission has to be sought from the respective Township Administrative Authorities and Police Force in accordance with procedures. Respective Township Administrative Authorities have issued since August 1989 directives, including procedures to be followed by the political parties when they hold meetings and ceremonies. Legal action can be taken against those who undertake such procedures if they do not adhere to the directives."

40. According to a SLORC statement on 28 September, the Ministry of Home Affairs and security officials "intimated [to] persons involved with the NLD on 2 and 4 June 1996 that roadside talks of Daw Suu Kyi, U Tin Oo and U Kyi Maung on University Avenue on weekends must no longer continue". The roadside talks and news circulated among representatives of foreign media and external organizations were, according to SLORC, "meant to cause disruption of stability and peace and rule of law and collapse of economic order". The NLD congress was thus a "political movement intended to incite riots and upheaval in the entire country".

41. On the night between 11 and 12 October, University Avenue, the street where Daw Aung San Suu Kyi resides, was again closed to traffic and pedestrians by traffic police and Lon Htein (riot police) troops. On 16 October the barricades were removed but the street remained forbidden for everyone. The registration plates of cars allowed to enter neighbouring streets were reportedly recorded by the police and a nearby gas station and a grocery shop were shut down by the police. On 12 October the Public Relations and Information Division of the Ministry for Foreign Affairs issued a statement explaining the measures undertaken by saying that Daw Aung San Suu Kyi had said on 8 October that the NLD congress and roadside talks would be held and NLD members had been asked to gather at Daw Aung San Suu Kyi's residence at 8.30 a.m. on 12 October:

> "In order to avoid the undesirable consequences arising out of such a gathering including outbreak of confrontation and riots, disturbance of existing peace and stability in the nation, unruly

actions and incitement in the street affecting the daily life of the ordinary people, the authorities have decided as a preventive measure the temporary closure to both traffic and pedestrians of the University Avenue from Kokang Road junction to the Inya Myaing Road starting from the morning of 12 October."

42. Also in October some gatherings of people were broken up by the police. On 12 October there were reportedly four clashes between security forces and people approaching Daw Aung San Suu Kyi's house. In the first incident security forces allegedly chased and attacked a crowd at Kokkine intersection, whereafter the crowd dispersed. Later people assembled again, and the security forces lifted the barricades to let people pass, and then reinstated the barricades, trapping people inside and attacking them. On the same day there were clashes between crowds and security forces also in the Campbell and Hamidtit areas. SLORC reported 25 arrests, but all persons arrested were said to have been released later. After the clashes there was a heavy security presence in the areas.

43. On 1 November 1996 the authorities suggested that larger public meetings may be held within Daw Aung San Suu Kyi's compound, but that not more than 10 persons may gather outside her gate. Daw Aung San Suu Kyi reportedly did not accept these limitations. On 3 November 1996 several processions of NLD supporters were dispersed by riot police on roads leading to Daw Aung San Suu Kyi's house, and at least four persons who tried to gather near Daw Aung San Suu Kyi's house were reportedly briefly detained. Some monks were reportedly injured as a result of the use of batons. SLORC Lt. Col. Hla Min stated on 5 November that the 12 persons detained on the evening of 3 November in connection with a demonstration had been released the following day.

44. The Special Rapporteur was very disturbed to learn of the attacks on Daw Aung San Suu Kyi on 9 November by a stone-throwing mob of about 200 persons. Allegations of government involvement in the event circulated, as the two attacks on the cars Daw Aung San Suu Kyi and her aides were travelling in took place at locations where there was a heavy security presence. Government officials denied their responsibility in the attack and said that they were investigating this incident. The result of such investigations are not yet known.

45. Some NLD members of Parliament, democratically elected in 1991, continue to submit their resignation as a result, it is widely believed, of the continual harassment and the pressure they are facing from the authorities:

(a) At the end of September Yangon Radio announced the resignation of two NLD MPs. U Ngint Tang from Tiddim township, Chin State, was said to have resigned for health reasons and U Zaw Win was said to have resigned because of his family's health problems, and their resignation was accepted by the Multiparty Democratic Election Commission in accordance with section 11, subsection E of the People's Assembly Election Law;

(b) On 28 November Yangon Radio announced the resignation of U Saw Oo Reh, Hpru-so township, Kayah State, citing poor health and old age.

46. Since the September arrests, guards posted at Daw Aung San Suu Kyi's house have reportedly been discouraging and sometimes even preventing her from leaving the compound. According to a statement made on 31 December 1996 by Lt. Gen. Khin Nyunt at a press conference and published in the New Light of Myanmar, "The main reason why a request had been made to Daw Aung San Suu Kyi not to leave her residence was a precautionary measure to prevent untoward incidents because of the current situation. It had been discovered that anti-Government underground elements were actively trying to stir up and foment trouble in Yangon. So to prevent further disorder the Government had simply requested Daw Aung San Suu Kyi not to leave her compound for the time being."

47. Daw Aung San Suu Kyi's correspondence is said to be studied, her phone reportedly tapped, and her meetings with foreigners closely monitored.

48. On 27 September the NLD office on Shwegondine Road was closed and the NLD signboard was taken down. According to SLORC the office was closed since the contract had expired and the landlord was disturbed by the 300 persons that gathered on his property on 27 September to prepare the congress and therefore took the building back. According to the NLD, the landlord was illegally forced to annul the lease and to remove the signboard from the building. He was threatened that the NLD would be declared illegal and that the building would thereafter be confiscated.

49. The Special Rapporteur was told that in Mayangone (Yangon Division), the authorities demanded that the NLD signboard be reduced in size. It was further reported that in Sagaing Division, the Township Law and Order Restoration Council offices sent a letter to NLD offices instructing them to take down their signboards. Also in Yangon NLD offices were reportedly ordered to take down their signboards, and authorities told building owners that the NLD will be declared illegal and that the buildings thus risked being confiscated.

50. The Special Rapporteur notes that freedom of association also implies a right to refrain from joining associations. In 1995 SLORC, apparently in preparation for the Visit Myanmar Year, reportedly issued a directive requiring all hotels in Myanmar to join the recently created Hotel and Tourism Committee. In addition to an obligatory membership fee, members reportedly have to contribute funds for "community projects".

51. In addition the Special Rapporteur has received reports that most members of the USDA have joined the organization against their will. Civil servants are said to have their names automatically registered on USDA rosters, and village- and township-level authorities are reportedly expected to register at least one USDA member per household. According to reports students in some areas must join the USDA if they want to pass their matriculation exams.

52. With respect to the right to form and join an association, the Special Rapporteur deeply regrets the fact that this right is denied to Myanmar citizens and the events of early December 1996 have demonstrated that the absolute power of the SLORC is also exercised to penalize those wishing to form an independent association .

53. During the first week of December 1996, between 1,000 and 2,000 university students from Yangon's Institute of Technology (YIT) started a series of protest demonstrations in central Yangon demanding, inter alia, the formation of a fully independent students' union. The protests, which appear to be a general expression of frustration and disappointment at the lack of freedom of association and expression and rule of law, spread to Mandalay (Myanmar's second largest city), where students from the Institute of Technology and the Institute of Medicine have also been demonstrating, and to other cities of the country.

54. The security police and army arrived with fire trucks and police vehicles. Several army trucks, three fire engines and two prison buses were seen during the demonstrations. The road leading to the YIT and the surrounding area were blockaded by security personnel. The demonstrations were broken up by security forces. The demonstrators were hosed with water cannons and security forces were reported to have beaten students taking part in the demonstration. The students did not resist. During the demonstrations, police stoned bystanders on the streets as well as onlookers in nearby houses to discourage eyewitnesses. It was reported that about 400 students were arrested for brief questioning and control of identity. Most of the students detained were reportedly released, but some allegedly remained in detention. In an article published on 2 January 1997 in NLM, a SLORC official, Col. Thein Swe, said that the authorities took in 424 students and 172 other persons, all of whom were later transferred to the care of faculty members and the local SLORC respectively, to be subsequently returned home. No one was detained, according to the authorities.

55. Subsequent to these events, universities and most high schools for boys have been closed to classes. Yangon University announced on 8 December 1996 that the 88th Convocation of Yangon University, scheduled to be held on 13 and 14 December, was postponed and that the new schedule would be announced later. The entrance examination for an evening computer course of the Ministry for Education scheduled for 15 December was reported to have also been postponed, the date of the exam to be announced later. On Friday, 13 December, it was announced that the 30th Convocation of the Yangon Institute of Technology had been postponed.

56. There were reports of teachers and regional officers being sacked as the authorities held them responsible for the unrest. On 15 November, in his address at the conclusion of the Special Refresher Course for Basic Eduction Teachers, the Chairman of the Education Committee, Secretary One Lt. Gen. Khin Nyunt, stated that "the crucial role of teachers is to be always guided seriously by political outlook in moulding the student youths to become reliable and patriotic intellegentia and intellectuals who will build the modern, developed and affluent nation of the future". He stated that teachers must safeguard students from "swaying to the luring of those with the false notion" that Myanmar will prosper only with assistance from the outside. He warned that teachers must guide the students and make them vigilant against the "neo-colonialists and those within the country who have lost their national identity so that they might not be used as stepping-stones in their schemes for enslaving the nation". Teachers are "duty-bound to nurture their pupils to have a strong moral base, free from thinking highly of

counter-cultures and material development of other countries ... prevent them from becoming ones who will seek their own gain and betray the national cause". It is evident that the Basic Education courses, which take place on a regular basis, are used as important forums for senior SLORC officials to impart national policy and demand cooperation on the part of the teachers. The extracts show that the speeches are clearly aimed at controlling the student population which, as in the past, seems to be an integral part of the democratic movement.

57. It is significant to note that throughout that week, there was no direct reference made to the student demonstrations which took place in Yangon and which were said to be the most serious challenge to the Government since 1988. In the press there were only indirect indications that the situation in the capital was not normal. On 9 December 1996, Senior General Than Shwe addressed a gathering of USDA executives, stressing that it was "highly essential" for them to implement the Government's 12 political, economic and social objectives, and he urged students to observe discipline and warned them to conduct themselves peacefully and be vigilant against destructive elements.

58. Other than notices that appeared during the first week of December regarding the cancellation of courses, there was no indication in the press about the students' demonstrations as such. To the contrary, Myanmar authorities made several attempts to prevent the coverage of the events:

(a) On 4 December 1996, the Foreign Correspondents Club of Myanmar (FCCM), whose members are all Myanmar nationals working for foreign newspapers and wire services, issued a protest at the detention and beatings of one of their members, U Myo Thant, a photographer for the Japanese daily Yomiuri Shimbun. U Myo Thant, aged 39, was repeatedly beaten around the head and upper body at the Shwedagon Pagoda on 3 December by Lone Htein riot police. He was then forced into a police van and taken to the Kyaikkasan racetrack. After finally convincing the authorities that he had an official journalist's pass and that he had the authorization to enter the Shwedagon area, at the time already cordoned-off by the Lone Htein, he was released and went to Insein General Hospital, suffering from head injuries;

(b) A Japanese journalist working for Yomiuri Shimbun, Shigefumi Takasuka, was badly beaten as he watched the demonstrations. He was taken for questioning by military intelligence and finally released two days later;

(c) At least three other freelance journalists were deported from Myanmar during the first week of December 1996. All of those deported were on tourist visas, and government officials said they were deported because they had worked as journalists while in Myanmar without permission.

59. In the week following the last student demonstration, further arrests of students were reported. On 10 December about 20 students from Yangon Arts and Science University were reportedly arrested after staging a demonstration outside the United States Embassy in Yangon. The Government of Myanmar, however, denied that there had been any arrests.

F. Measures adversely affecting democratic governance

60. The Special Rapporteur has already described, in Part III of his last report to the General Assembly, the events which have obstructed the establishment of a democratic order after the general elections of 1990. Some further observations are called for.

61. At a press conference held on 1 October 1996, SLORC stated that "the Government is holding power only transitionally. Its main duty is the peaceful transition which will lead towards a multiparty democratic nation". There have also been statements by SLORC that "there is no need for an opposition group, since the Government has the responsibility for a peaceful transition to democracy". It remains unclear how a multiparty democracy can function without opposition parties. On 21 September 1996, the Vice-President of SLORC, Gen. Maung Aye, is reported to have declared that the military could remain in power longer if elements receiving foreign support caused disorder and on 25 September 1996, the NLM indicated that Daw Aung San Suu Kyi would soon be charged with political crimes as she was conspiring with former colonial powers and aiding exiled dissident groups in a plot to overthrow the Government. Military intelligence officers also claimed to have charts and printed material allegedly proving Daw San Suu Kyi's involvement with exiled dissident groups. Finally, in the NLM of 1 October 1996, Senior General Than Shwe is reported to have stated that "drastic action will have to be taken in the interests of the nation and the people against attempts to destabilize and divide the Tatmadaw ... Confrontation and conflict hinder and obstruct national progress ... Whatever action is taken against the NLD is purely an internal matter".

62. The Special Rapporteur wishes to recall that the promotion and protection of human rights are not "purely an internal matter". In this regard, he wishes to recall in particular the observations he made at paragraphs 9, 10 and 12 of his last report to the General Assembly.

63. In the view of the Special Rapporteur, the absence of respect for the rights pertaining to democratic governance, as exemplified by the absence of meaningful measures towards the establishment of a democratic order, is at the root of all the major violations of human rights in Myanmar. It is most unlikely that these violations will cease as long as the democratic process initiated by the general elections of 1990 is not re-established. In this regard, the release in 1995 of Daw Aung San Suu Kyi and the cease-fire with armed ethnic forces during 1995 and 1996 did raise some hopes that a political dialogue might be about to begin. Disappointingly, however, the National Convention, by reason of its mandate, composition and procedures, including its protracted proceedings, has not proved a positive step and is devoid of democratic credibility. The political process continues to appear deadlocked, with sweeping restrictions in law and practice on the exercise of virtually all human rights and freedoms.

G. Remedial measures

64. The Special Rapporteur is convinced that necessary measures implementing the resolutions of the General Assembly and the Commission on Human Rights have become more urgent for the establishment of democracy in accordance with

the will of the people, as expressed in the general elections held in 1990. To this end, a substantive political dialogue should be urgently engaged with the leaders of political parties returned at those elections, including representatives of ethnic groups, and political parties should be permitted to function freely.

III. THE MISSION TO THAILAND

65. Myanmar is one of the most ethnically diverse countries in the world, with ethnic minority groups making up at least one third of the population of 45 million, and inhabiting half the land area. Although SLORC frequently makes reference to its "135 national races", no official population statistics indicating the current size of the different ethnic groups exist.

66. The 1974 Constitution divided the country into seven ethnic minority States (Chin, Karen, Kachin, Kayah (formerly Karenni), Mon, Rakhine (Arakan) and Shan States) and seven Divisions, largely inhabited by the majority Burman population. The 1947 Constitution guaranteed some of these States a right to secession after a trial period - a right which the 1974 Constitution abolished.

67. By article 1 of the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, Member States have undertaken to protect the existence and national, ethnic, religious or linguistic identity of minorities within their respective territories and to encourage the conditions for the promotion of that identity. Article 4 (1) of the Declaration provides in addition that Member States shall "take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law".

68. Article 27 of the International Covenant on Civil and Political Rights provides that, "[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language". In its General Comment No. 23 on that article (CCPR/C/21/Rev.1/Add.5 of 26 April 1994), the Human Rights Committee observed that, while the enjoyment of the rights to which article 27 relates does not prejudice the sovereignty and territorial integrity of a State, the article nevertheless establishes and recognizes a right which is conferred on individuals belonging to minority groups and which is distinct from, and additional to, all the other rights which, as individuals in common with everyone else, they are entitled to enjoy under the Covenant.

69. It is to be noted that persons belonging to minorities are to enjoy, in addition to minority rights, all other human rights. Article 2 (5) of the 1992 Declaration provides that minorities may communicate with persons in other States with whom they are linked by their national or ethnic origin, religion or language. In this regard, freedom of expression, which includes freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers, is especially important for persons belonging to ethnic, religious or linguistic minorities.

70. In order to assess the human rights situation of these specific groups, and because the Special Rapporteur has so far been denied access by the Myanmar authorities to the country, the Special Rapporteur visited Thailand between 9 and 19 December in order to meet with persons of interest to his mandate and to visit camps of displaced persons from Myanmar. These displaced persons belong largely to ethnic minorities. With respect to the specific itinerary followed by the Special Rapporteur, he visited camps in the area of Mae Sot and met with Karens from Myanmar, then proceeded to Chiang Mai and visited gathering sites of displaced persons from Shan State. He continued on to the area of Mae Hong Son in order to visit camps of displaced persons from Kayah (Karenni) State. During his visit, the Special Rapporteur met with a total of 50 newly arrived persons from Myanmar, mostly Karen, Shan and Karenni. The information and views obtained in the course of his visits will be reflected below under the relevant subject headings.

71. Displacement has become a way of life for many persons belonging to the ethnic minorities of Myanmar. For the past 30 years Karen, Mon, Karenni and Shan have fled their homes and lands in the course of fights between the Tatmadaw and insurgent groups representing these ethnic groups. Many of them have sought asylum in other countries, notably Thailand.

A. Introduction: The problem of displacement

72. Since the independence of Myanmar from British colonial rule in 1948, Myanmar has suffered from unresolved conflicts between most of the ethnic minorities of the country and the central authorities. These conflicts precipitated insurgencies in several parts of the country which have resulted in large numbers of internally displaced persons. Furthermore, following the events which occurred in 1988, it has been estimated that over 1 million persons have been forcibly relocated, without any compensation, to new towns, villages or relocation camps in which they are essentially detained. This displacement is also attributed to major development projects undertaken by the Government of Myanmar in the process of which large numbers of persons are removed from the lands designated for the projects without being assisted in relocation or appropriately compensated.

73. The Special Rapporteur is not in possession of any independently verified statistics on the number of displaced persons in Myanmar, but local and international NGOs estimate the number of the displaced to be at least 1 million.

74. While studying the situation, the Special Rapporteur has found three reasons accounting for the uncertainty. The first has to do with the fact that until now there seem to have been no attempts on the part of the Government of Myanmar to acknowledge this phenomenon and, therefore, no official statistics are available on the number of displaced persons in Myanmar.

75. The second reason has to do with the particular phenomenon of displacement in the country. Internally displaced persons rarely flee in large numbers as in other situations; usually they move in small groups of a few families or individuals. The areas of expulsion are numerous and spread throughout the country, including in the border areas between Myanmar and

Thailand. The displaced usually move to neighbouring rural areas and from there to camps located in Thailand or directly to Thailand, often to join relatives or friends originating from the same area.

76. The third reason has to do with the attitude of the displaced themselves towards their displacement. The Special Rapporteur was told during his visit to Thailand that people in Myanmar flee in absolute silence, not wishing in most instances to be identified as displaced, in order to avoid persecution and fearing execution.

77. It has to be stressed that the situation in Myanmar is so complex and susceptible to so many different interpretations that comprehensiveness is elusive. The causes of displacement are numerous and differ from one region to another, although certain common parameters can be discerned - as reflected below.

B. The main causes of displacement

1. Forced relocation

78. At present, forcible relocations appear to be taking place in two main contexts: as part of development projects and under counter-insurgency operations in ethnic minority regions of the countryside. Although the practice of forced relocations by the military as a means to control the population living in ethnic regions is not new, the scale of these moves increased significantly after 1988 and it is still taking place today. Victims of displacement are mostly peasants, including members of the indigenous and/or ethnic groups such as the Karen, Karenni, Shan and Mon, who are living in areas of insurgency and victimized by counter-insurgency activities or caught in the cross-fire.

79. In order to cut the main links between the insurgent groups and the civilian population, SLORC has forced entire communities living in the border area between Myanmar and Thailand to move to relocation sites which are subject to tight military control. Expulsion (military) orders have been issued, warning that anyone trying to remain in their homes will be shot on sight.

(a) In Central Shan state, SLORC initiated one of its largest forced relocation programmes, which still continues. It was reported that from March 1996 SLORC troops ordered village after village in eight townships (Larng Kher, Murng Nai, Nam Zarng, Lai Kha, Murng Kerng, Kun Hing, Ke See and Murng Su) to move to a total of 45 relocation sites. The estimated number of people being relocated is over 100,000 from over 600 villages;

(b) In Kayah (Karenni) state, it was reported that throughout June and July 1996, SLORC delivered orders to more than 100 villages located between the Pon and Salween Rivers instructing them to move to relocation sites near SLORC army camps in Sha Daw and Ywa Thit townships. The estimated number of people being relocated is 20,000-30,000 and most of them are ethnically Kayah. The army's intention is said to isolate the population in that area from

Karenni insurgents of the Kayinni National Progressive Party (KNPP). Army officers allegedly warned that those who remained in the deserted villages would be considered insurgents or "enemies".

2. Forced labour and portering

80. Forced conscription of civilians into compulsory labour duties for the military authorities, including the practice of forced recruitment of porters, is also one of the causes of people leaving their homes. No pay is given for such labour and the period of service can last months. This practice disrupts family life and precludes persons from carrying on their daily work in order to earn a living.

81. While development and industrial projects such as railway construction, and the creation of tourist attractions are carried out in areas inhabited by minorities, many people are having their lands confiscated without any compensation and are forced to move to designated sites.

C. Patterns and consequences of displacement

82. Testimonies received by the Special Rapporteur, as well as comments received from representatives of non-governmental organizations, indicate that victims of displacement are mostly villagers and farmers, living in remote areas of Karen, Shan and Karenni states. Most of them have not been officially registered and do not possess any identification cards or other documents.

83. Following orders to move from their homes, peasants usually try to move first to a nearby rural area or to the jungle, trying to work in their fields during the day and returning for safety at night; once they move to a designated relocation site, they are no longer entitled to leave the compound.

84. Family units and communities are invariably destroyed. The displaced lose their natural and cultural context which leads to a variety of serious social problems. Being forced to move means that peasants in particular have to abandon everything. Displacement leaves them in a worse economic and social situation.

85. Emotional trauma amongst the displaced is common. Families remain without support, battered by violence, while often meagre resources vanish. They often suffer from fear and anxiety associated with loss of work and social role. Women have been additionally affected by violence aimed particularly against them such as rapes and beatings.

D. Issues of humanitarian law

86. Numerous testimonies received by the Special Rapporteur indicate that the civilian population living in or near the combat zone is the most susceptible to being forced to move: in these "grey zones" (zones controlled or influenced by the insurgents) the armed forces often resort to ground searches, destruction and burning of houses, and confiscation of property and food, which lead the people to move temporarily or permanently.

87. Testimonies indicate that often, if not always, the distinction between insurgents and non-combatants is not made and that, therefore, the inhabitants of these zones are also said to be subjected to indiscriminate torture, beatings and arbitrary arrests.

88. Cases of forced evictions seem to occur with great frequency or as a matter of policy. All the people interviewed by the Special Rapporteur stated that they were given at most one week's notice to move and were told that they would be shot if they did not comply. They were forced to leave their piece of land, their crops and most of their animals; much of the property was reportedly immediately stolen or confiscated by SLORC troops.

89. According to testimonies received, relocation sites consist mainly of a large and empty piece of land surrounded by fences or barbed-wire and near a military camp. Nothing is prepared by the authorities to receive the new forced arrivals. There seems to be a food and a health crisis and a general lack of adequate housing and basic services. Villagers have to build their own makeshift huts and provide their own food. One member of each family living in the relocation site has to do various tasks for SLORC, such as building their compound. The interviews, did not make clear to what extent the rights to education and access to health care, especially for children, are being fulfilled. Each family also has to provide one person to work for the army whose compound is usually located on the same site. They perform different duties such as building the fences, cleaning the compound or guarding the site. The villagers are not entitled to leave the compound. Their freedom of movement is extremely limited and in all cases subject to authorization from the local military battalion.

90. Testimonies indicate that some persons who tried to flee were threatened or actually prohibited from doing so. Attempting to flee is said to be interpreted by the authorities as positive proof of participation in or sympathy with the insurgency and of an intention to report on the abuses committed by the Army. Others were required to obtain safe conduct passes or pay high fees at checkpoints for a "permission" to leave. Other sources have reported incidents of women and children being shot at while fleeing in areas near the border with Thailand.

E. Rights particularly relevant to displaced persons in Myanmar

91. In the first place, the forced displacement of persons is not consistent with human rights norms as proclaimed in article 13 of the Universal Declaration of Human Rights and article 12 of the International Covenant on Civil and Political Rights. Freedom of movement and freedom to choose one's residence in one's own country may be restricted on limited grounds and can only be derogated from during times of public emergency which threatens the life of a nation and the existence of which is officially proclaimed. Such derogations, however, are temporary and may not be resorted to in a manner which violates the right to life or the right to be free from torture or cruel, inhuman or degrading treatment or punishment, among other things, as proclaimed in article 4 of the International Covenant on Civil and Political Rights. In any event, displaced persons have a right to return to their place of residence and to the protection of the property that they leave behind. Further, where persons are displaced in circumstances which are consistent

with international norms, they have a right to live in conditions in which basic rights to food, housing and health are secured, not to speak of reasonable social amenities and the enjoyment of all other basic rights to life, physical security and public freedoms.

92. Finally, and in analysing the information he has received, the Special Rapporteur observes that article 3 (1) common to the four Geneva Conventions of 12 August 1949 provide as follows:

> "In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:
>
> > "1. Persons taking no active part in hostilities, including members of the armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.
> >
> > "To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
> >
> > "(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
> >
> > "(b) Taking of hostages;
> >
> > "(c) Outrages upon human dignity, in particular humiliating and degrading treatment;
> >
> > "(d) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples."

The obligation to apply common article 3 is absolute for governmental armed forces as well as armed dissidents, and is independent of the obligation of the other party.

93. The Special Rapporteur also observes that article 17 of Protocol II Additional to the Geneva Conventions of 12 August 1949 requires that, in the case of displacements carried out for the safety of civilians or for imperative military reasons, the responsible party must take "all possible measures ... in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition". Article 14 of the same instrument also stipulates a prohibition of starvation of civilians under the control of organized armed forces.

F. Remedial measures

94. The phenomenon of displacement would appear to relate largely, if not exclusively, to ethnic minorities. The problem is not new, and originates mainly from the absence of a political solution dating back to colonial times and before. The cease-fire agreements concluded over recent years are a beginning to a solution but are likely to be fruitless until serious and meaningful measures are taken to engage in a political dialogue which includes the ethnic minorities. The Special Rapporteur, therefore, reiterates his view that a political dialogue must urgently be engaged between the present regime and the political parties returned at the elections of 1990, including representatives of ethnic minorities, with a view to working out such measures as might be considered best to bring the democratic process engaged in 1990 to fruition.

95. Measures to ensure the protection of other human rights also have to be taken. In this respect, the Special Rapporteur expresses his concern over the seriousness of the evidence relating to the country's human rights record. As relates more specifically to the displaced persons, the Special Rapporteur would like to underline the importance of land and property rights and respect for humanitarian law including the rights to life and physical integrity, especially during and immediately following forced evictions.

96. Another important step would be for the Government of Myanmar to open up space for legitimate social action primarily at the micro-level. Grass-roots projects with the local participation of the citizens should have beneficial effects on the local population and should be promoted and supported. There is considerable need for measures strengthening public administration, an independent and impartial judiciary, decentralization and better control over the military.

97. Human rights promotion and protection at the local level are also very important, including in areas where the central Government has little influence. In this connection, there should be human rights training for the military and organization of workshops in relocation sites.

98. Projects for the provision of humanitarian assistance, shelter, health care and psychological assistance during the first days of arrival are to be encouraged. In this regard there should be greater cooperation between the State and the non-governmental organizations already working in Myanmar.

99. In rural areas and in the various regions of the country where the military has an especially strong position, the human rights situation seems to be particularly grave and too few violations are being investigated.

100. Very few returns to areas of origin seem to be taking place. The reason is that at the moment there exist very few solutions to the fundamental causes of displacement. For example, as the Special Rapporteur was told, for the peasants who have lost their land, either because they had to sell it very cheaply before they fled or because it was taken by the army, return is not possible; where the armed conflict is continuing, return is also not an option.

V. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

101. The Special Rapporteur regrets that his efforts to obtain the cooperation of the Government of Myanmar and to visit the country have so far failed. Nevertheless, the Special Rapporteur is confident that much of the evidence brought to his attention speaks for itself.

102. The Special Rapporteur observes that the absence of respect for the rights pertaining to democratic governance is at the root of all the major violations of human rights in Myanmar in so far as this absence implies a structure of power which is autocratic and accountable only to itself, thus inherently resting on the denial and repression of fundamental rights. The Special Rapporteur concludes that genuine and enduring improvements in the situation of human rights in Myanmar cannot be attained without respect for the rights pertaining to democratic governance. In this regard, he notes with particular concern that the electoral process initiated in Myanmar by the general elections of 27 May 1990 has still not reached its conclusion and that the Government still has not implemented its commitments to take all necessary steps towards the establishment of democracy in the light of those elections.

103. Government representatives have repeatedly explained that the Government is willing to transfer power to a civilian government but that in order to do so there must be a strong constitution, and that in order to have a strong Constitution they are doing their best to complete the work of the National Convention. However, the Special Rapporteur cannot help but observe that, given the fact that most of the representatives democratically elected in 1990 have been excluded from participating in the meetings of the National Convention, the restrictions imposed upon the delegates (practically no freedoms to assemble, print and distribute leaflets or to make statements freely), and the general guidelines to be strictly followed (including the principle regarding the leading role of the Tatmadaw), the National Convention does not constitute the necessary "steps towards the restoration of democracy, fully respecting the will of the people as expressed in the democratic elections held in 1990".

104. Detailed reports and photographs seen by the Special Rapporteur lead him to conclude that extrajudicial, summary or arbitrary executions, the practice of torture, portering and forced labour continue to occur in Myanmar, particularly in the context of development programmes and of counter-insurgency operations in minority-dominated regions.

105. With regard to allegations of arbitrary arrest and detention, the Special Rapporteur does not doubt that such violations take place on a wide scale, if on no other basis than his examination of the laws in place which shows that such violations are legal and may easily occur. At the same time, the absence of an independent judiciary coupled with a host of executive orders criminalizing far too many aspects of normal civilian conduct, prescribing enormously disproportionate penalties and authorizing arrest and detention without judicial review or any other form of judicial

authorization leads the Special Rapporteur to conclude that a significant percentage of all arrests and detentions in Myanmar are arbitrary when measured by generally accepted international standards. In this regard, the Special Rapporteur expresses his deep concern at the continued detention of many political prisoners, in particular elected representatives, and the recent arrests and harassment of other supporters of democratic groups in Myanmar, culminating at the end of September 1996 in the massive arrests of NLD supporters and the virtual blockade of the Secretary-General of the NLD in her compound.

106. On the basis of virtually unanimous reports and other information, the Special Rapporteur concludes that there is essentially no freedom of thought, opinion, expression or association in Myanmar. The absolute power of SLORC is exercised to silence opposition and penalize those holding dissenting views or beliefs. Because of both visible and invisible pressures, the people live in a climate of fear in which whatever they or their family members may say or do, particularly in the area of politics, involves the risk of arrest and interrogation by the police or military intelligence. The Special Rapporteur notes that NLD leaders cannot assemble in a group, cannot freely discuss, and cannot publish or distribute printed material. In this situation it is difficult to assume that open discussion and free exchanges of views and opinions can possibly take place in Myanmar, unless they are in support of the present military regime.

107. Turning to freedom of movement and residence in Myanmar, including the right to leave and re-enter one's own country, the Special Rapporteur concludes that there are clear violations of these freedoms found in Myanmar law and practice themselves. Specifically, severe, unreasonable and, in the case of the Muslim Rakhine population, racially based restrictions are placed on travel inside the country and abroad. On the matter of internal deportations and forced relocations, the Special Rapporteur concludes that the Government's policy violates freedom of movement and residence and, in some cases, constitutes discriminatory practices based on ethnic considerations.

B. Recommendations

108. The Special Rapporteur regrets that he finds it necessary to repeat all of the recommendations made in his report to the General Assembly in 1996. In the light of the foregoing conclusions, the Special Rapporteur submits the following recommendations for the consideration of the Government of Myanmar:

(1) The Government of Myanmar is urged to fulfil in good faith the obligations it has assumed under Articles 55 and 56 of the Charter of the United Nations "to take joint and separate action in cooperation with the Organization for the achievement of ... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language and religion". In this respect, the Special Rapporteur would wish to note that the Government of Myanmar should encourage the adoption, as one of the basic constitutional principles of the provisions of the Universal Declaration of Human Rights, a copy of which should be made widely available in the Burmese language.

(2) The Government of Myanmar should further consider accession to the International Covenants on Human Rights; the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the two protocols additional to the Geneva Conventions of 1949.

(3) Myanmar law should be brought into line with accepted international standards regarding protection of physical integrity rights, including the right to life, protection against disappearance, prohibition of torture, cruel, inhuman or degrading treatment, providing humane conditions for all persons under detention and insurance of the minimum standards of judicial guarantees.

(4) In the interest of ensuring that the Government of Myanmar genuinely reflects the will of the people, steps should be taken to allow all citizens to participate freely in the political process, in accordance with the principles of the Universal Declaration of Human Rights, and to accelerate the process of transition to democracy, in particular through the transfer of power to the democratically elected representatives. The institutions of government should benefit from a separation of powers as to render the executive accountable to the citizenry in a clear and meaningful way and, furthermore, steps should also be taken to restore the independence of the Judiciary and to subject the Executive to the rule of law and render executive action justiciable.

(5) The Government of Myanmar is urged to take all necessary measures to accelerate the process of transition to democracy and to involve in a meaningful way in that process the representatives duly elected in 1990. In this regard, the Government of Myanmar should without delay begin a process of genuine and substantive dialogue with the leaders of the National League for Democracy and with other political leaders who were duly elected in the democratic elections of 1990, including representatives of the ethnic minorities.

(6) The Government of Myanmar should also take all necessary measures to guarantee and ensure that all political parties may freely exercise their activities without restrictions and that, in this context, all restrictions imposed on the Secretary-General, the leaders and members of the NLD should be immediately lifted so that they may freely exercise their civil and political rights.

(7) All political detainees, including elected political representatives, students, workers, peasants and others arrested or detained under martial law after the 1988 and 1990 demonstrations or as a result of the National Convention, should be tried by a properly constituted and independent civilian court in open judicial proceedings and in accordance with all the guarantees of fair trial and due process in conformity with applicable international norms. If found guilty in such judicial proceedings, they should be given a just sentence proportionate to their offence. Otherwise, they should be immediately released with the Government responsible for refraining from all acts

of intimidation, threats or reprisal against them or their families and for taking appropriate measures to compensate all those who have suffered arbitrary arrest or detention.

(8) The Government of Myanmar should ensure that all laws rendering violations of human rights legitimate are urgently repealed, that laws are given due publicity and that the principle of non-retroactivity of penal laws is respected.

(9) The Government of Myanmar should give particular attention to prison conditions in the country's prisons and take all the necessary steps to allow international humanitarian organizations to have access thereto and to communicate freely and confidentiall, with prisoners.

(10) The Government of Myanmar should take steps to facilitate and guarantee the enjoyment of the freedoms of opinion, expression and association, in particular by decriminalizing the expression of oppositional views, relinquishing government controls over the media and literary and artistic works.

(11) The Government of Myanmar should remove all restrictions relating to the entry and exit of citizens into and out of the country, as well as their movement within the country.

(12) The Government of Myanmar should cease all discriminatory policies which interfere with the free and equal enjoyment of property, and compensate appropriately those who have been arbitrarily or unjustly deprived of their property.

(13) The Government of Myanmar should fulfil its obligations under International Labour Organization Convention (ILO) No. 87 concerning Freedom of Association and Protection of the Right to Organize of 1948. In that respect, the Government of Myanmar is encouraged to cooperate more closely with ILO through a technical cooperation programme so that the very serious discrepancies between the law and the practice on the one hand, and the Convention, on the other hand, are urgently eliminated.

(14) The Government of Myanmar is urged to comply with its obligations under ILO Convention No. 29, prohibiting the practice of forced labour and forced portering. In this connection, the Government of Myanmar should urgently take the appropriate measures to repeal the offending legal provisions under the Village Act and the Towns Act to prevent the continuation of the practice of forced labour. In this regard, the Government of Myanmar is encouraged to cooperate with ILO to that end.

(15) The Government of Myanmar should take the necessary steps to bring the acts of soldiers, including privates and officers, in line with accepted international human rights and humanitarian standards so as to prevent arbitrary killings, rapes, and confiscations of property, or forcing persons into acts of labour, portering, relocation or otherwise treating persons without respect to their dignity as human beings. When

villagers are hired for porterage and other works, adequate wages should be paid. The nature of work should be reasonable and in accordance with established international labour standards.

(16) The Government of Myanmar should take urgent steps to put an end to the enforced displacement of persons and to create appropriate conditions to prevent the flow of refugees to neighbouring States. In the event that the relocation of villagers becomes necessary in circumstances which are in conformity with international norms, proper consultations should take place with the villagers, including the payment of appropriate compensation, reviewable by independent courts, and the taking of measures to ensure that food, housing facilities, proper medical care and social amenities, including appropriate arrangements for the education of children, are provided in adequate measure in the interest of the displaced persons.

(17) Military and law enforcement personnel, including prison guards, should be thoroughly informed and trained as to their responsibilities towards all persons in full accord with international human rights norms and humanitarian law. Such standards should be incorporated into Myanmar law, including the new constitution to be drafted.

(18) Given the magnitude of the abuses, the Government should subject all officials committing human rights abuses and violations to strict disciplinary control and punishment and put an end to the culture of impunity that prevails at present in the public and military sectors.